

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

OP.No. 7736 of 1999(U)

PETITIONER:

**NO.892298411 CONSTABLE ,
D.K.YADAV, C.I.S.F UNIT V.S.SC., THUMBA.**

**BY ADV. SRI.G.SASIDHARAN CHEMPAZHANTHIYIL
SMT.PEARLY MATHEW**

RESPONDENTS:

- 1. GROUP COMMANDANT
CENMTRAL INDUSTRIAL SECURITY FORCE,
RED HILLS, HYDERABAD.**
- 2. DEPUTY INSPECTOR GENERAL,
C.I.S.F (MINISTRY OF HOME AFFAIRS),
D BLOCK RAJAJI BHAVAN, BASANT NAGAR,
MADRAS- 90.**
- 3. THE INSPECTOR GENERAL)SW SECTOR),
C.I.S.F R.C.F.L., COMPLEX,
CHEMBEW, BOMBAY 74.**
- 4. UNION OF INDIA REP. BY THE SECRETARY
MINISTRY OF HOME AFFAIRS, NEW DELHI.**

**BY ADV. SRI.V.V.SURESH, ADDL.CGSC
SRI.S.VISHNU
SRI.JOHN VARGHESE, ASSISTANT SG**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 06/03/2007, ALONG WITH WPC NO. 15817 OF 2003 THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

ORDER ON CMP NO. 12936/1999 IN OP. 7736/1999

DISMISSED

06.03.2007

SD/- S.SIRI JAGAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ENQUIRY REPORT.

EXT.P2:- COPY OF THE PROCEEDINGS NO.V.15014/GHH/AD-IV/MEJ/DKY/94 AND 2031 DT.14.3.94 ISSUED BY THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE APPEAL DT 16.4.94 BEFORE THE 2ND RESPONDENT.

EXT.P4:- COPY OF THE LETTER NO.11014/33/94-A6 (SZ) 8695 DT.18.10.94 ISSUED BY THE 2ND RESPONDENT.

EXT.P5:- COPY OF THE JUDGMENT IN THE WA.162/98 DT.22.9.98 OF THE HONOURABLE COURT OF JUDICATURE ANDHRA PRADESH AT HYDERABAD.

EXT.P6:- COPY OF THE ORDER NO.V.11014/33/94/L&R(SZ) /7672 DT.18.11.98 ISSUED BY THE 2ND RESPONDENT.

EXT.P7:- COPY OF THE ORDER NO.V.11014/33/94/L&R (SZ) 509 DT.22.1.99 ISSUED BY THE 2ND RESPONDENT.

/TRUE COPY/

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S. SIRI JAGAN, J.

**O.P.NO. 7736/99 &
W.P.(C)15817OF 2003**

DATED THIS THE 6th DAY OF MARCH, 2007

JUDGMENT

Sri. D.K. Yadav a member of the Armed Forces is challenging in these two original petitions two separate punishments imposed on him pursuant to two separate disciplinary proceedings. The first one resulted in the lesser punishment of reduction of pay to the minimum in the time scale of pay for a period of three years. Thereafter the petitioner's period of absence from duty was treated as 'dies non'. In the second enquiry, which was on more serious charges of misconduct, the punishment of dismissal from service was imposed on the petitioner, Sri. D.K. Yadav. He is challenging the punishments and the proceedings, which culminated in the punishment in these two writ petitions. Since except the fact that in both the cases, the disciplinary proceedings are against the same person namely the petitioner the two original petitions do not have any inter-se connection and therefore both would have to be decided separately.

2. I shall first deal with O.P. No.7736 of 1999. The petitioner was served with a memo of charges – Ext.P1, containing four articles

of charges, which reads as follows:

"ARTICLES OF CHARGE NO.1

'Grades indiscipline and misconduct in that No.892298411 Const. D.K. Yadav of CISF Unit FCI ® on 3.9.93 at about 1815 hrs under the influence of alcohol entered into the office of Deputy commandant and misbehaved with SI/Steno V.A. Rajan.

ARTICLES OF CHARGE NO.11

'Insubordination and indiscipline in that No.892298411 Const. D.K. Yadav of CISF Unit FCI Ramagundam on 3.9.93 at about 1815 hrs entered into the office of the Deputy Comdt. Without permission and disturbed the work and peaceful atmosphere in the technical building by using unparliamentary language in loud voice against SI/Steno V.A. Rajan in front of other Co staff.

ARTICLES OF CHARGE NO.III

"Grave misconduct, moral turpitude and indiscipline in that No.892298411 Constable D.K. Yadav of CISF Unit FCI Ramagundam on 3.9.93 at 1900 hrs under influence of alcohol misbehaved with SI(M) AR Rout and threatened him with dire consequences in presence of office staff.

ARTICLE OF CHARGE NO.IV

"Insubordination and misconduct in that No.892298411 Const. D.K. Yadav of CISF Unit FCI Ramagundam on 3.9.93 at about 1930 hrs manhandled and caused physical injury to SI(M) AR Rout while SI(M) AR Rout was returning to his residence in bi-cycle"

3. An enquiry followed, in which the petitioner was found guilty of charge Nos.1 to 3. But he was found not guilty in respect of Charge No.4. Originally, he was imposed with a punishment of

dismissal from service. Later on, pursuant to orders of the Court in a writ petition, the appellate authority reconsidered the matter and converted the penalty of dismissal from service to that of removal from service by Ext.P6 order.

4. Accordingly, by Ext.P6 order, he was reinstated in service and he was also directed to show cause why the period he was kept out service on account of the disciplinary proceedings should not be treated as 'dies non'. His reply against the same also did not find favour with the disciplinary authority who by Ext.P7 order confirmed the proposal to regularise the intervening period from the date of removal from service and the date of reinstatement in service as 'dies non'. The petitioner is challenging these proceedings in O.P.7736/99. In this original petition, the petitioner does not challenge the proceedings itself as violative of any principles of natural justice or any statutory provisions but confines his challenge to the findings themselves as also the proportionality of punishment imposed on him. Regarding the findings, the contentions of the petitioner is that there was no reliable evidence to prove that the petitioner was under the influence of alcohol at the time when the incidents, which led to the disciplinary proceedings occurred. He would submit that although there was a general hospital available nearby, the disciplinary authority did not conduct a medical examination of the petitioner to

ascertain whether he was under the influence of alcohol. But I find that in the minutes of the enquiry it has been specifically stated that all the witnesses, who were eye witnesses to the incident examined in the enquiry to prove the charges against the petitioner, uniformly deposed that the petitioner was under the influence of alcohol at the relevant time. Unlike in the case of criminal cases, the fact that the petitioner was not sent for medical examination is not vital to the disciplinary proceedings in so far as there was other sufficient evidence available before the enquiry officer to come to the conclusion that the petitioner was in fact under the influence of alcohol. In this case, the witnesses who deposed in the enquiry stated that the petitioner was at the relevant time under the influence of the alcohol.

5. Of course, the learned counsel for the petitioner would try to make capital out of the fact that the failure on the part of the authorities to send the petitioner for medical examination was on the excuse that at the relevant time there was a power failure. He would submit that in so far as there is no contention that because of the power failure, the hospital itself was not working, that cannot be a ground for not sending him for medical examination. He would submit that in view of this unacceptable explanation given by the authorities, it must be presumed that the findings are perverse.

6. I am not inclined to agree with the counsel for the

petitioner in so far as the witnesses, who gave evidence before the enquiry officer categorically deposed that the petitioner was in fact under the influence of alcohol. The failure to send the petitioner for medical examination for whatever reason is of no consequence at all in the disciplinary proceedings. Regarding the charges found proved, the learned counsel for the petitioner could not satisfy me that the conclusion arrived at by the enquiry officer is in any way perverse. On the other hand, a perusal of Ext.P1 minutes of enquiry satisfies me that there was sufficient evidence in the enquiry to prove the petitioner guilty of the three charges levelled against him and the enquiry officer had given very cogent reasons for his conclusions. Therefore, I do not find any merit in the contentions of the petitioner against the conclusions arrived at in the enquiry.

7. Coming to the question of proportionality of punishment, the contention of the learned counsel for the petitioner is that a reading of the charges would show that the reduction of pay to the minimum in the time scale of pay for a period of three years is not commensurate with misconduct against the petitioner. I am afraid that my jurisdiction in this regard under Article 226 of the Constitution of India is very limited. The Supreme Court has time and again held that this Court can interfere with such punishments only on being satisfied that the punishment imposed is shockingly

proportionate. On a reading of the charges proved against the petitioner, I am unable to come to the conclusion that the punishment is shockingly disproportionate as contended by the counsel for the petitioner. Therefore the contention in this regard is also repelled.

8. The last contention of the petitioner is that the action of the disciplinary authority in treating the intervening period between the original dismissal of the petitioner from service and his later reinstatement, as 'dies non' is arbitrary and unreasonable. The rules confers a discretion on the disciplinary authority to treat the period during which a person is kept out of service between the period of original punishment and the date of reinstatement on account of court orders either as duty or as leave or as 'dies non'. If such discretion vested in the disciplinary authority is exercised bonafide, I do not think that this Court can interfere with the same. In Ext.P7 order, the disciplinary authority has given sufficient reasons to exercise his discretion, the way he did it. Further from the charges proved against the petitioner, which, for a Constable of the Armed Forces, is grave enough to warrant such a decision and therefore on that point also I do not find any merit in the contentions of the petitioner. Accordingly O.P.No.7736/99 is devoid of any merit and accordingly the same is dismissed.

9. Coming to W.P.(C)No.15817/03 the petitioner was again

charge sheeted for much more serious misconduct. The charges are contained in Ext.P1 statement of Articles of charges, which reads thus:

“ARTICLE – I

No.892298411 Constable D.K. Yadav of CISF unit VSSC Thumba while travelling in Shift Duty Bus to Pattom on 12.10.2000 at about 12.45 hrs en-route in between Pulimoodu and Pattom Junction, misbehaved with Smt. N. Sulochana, W/o. No.814680216 HC/GD C.T. Rajan of CISF Unit VSSC Thumba, by sitting beside her seat and caught hold of her saree. When she sat in another seat Constable D.K. Yadav again went and sat near to her and pulled her saree and did not allow her to get down. Thus, Constable D.K. Yadav outraged the modesty of Smt. N. Sulochana W/o. HC/GD C.T. Rajan of VSSC Thumba. This amounts to gross misconduct and gave indiscipline, unbecoming member of the Armed Force.

ARTICLE – II

No.892298411 Constable D.K. Yadav of CISF Unit VSSC Thumba argued with No.843190014 HC/Dvr P.R. Nair unnecessarily and disturbed his concentration, while HC/Dvr P.R. Nair was driving the Shift Duty Bus to Pattom to replace the “A” shift duty personnel on 12.10.2000, en-route in between Pulimoodu and Pattom Junction by uttering that “THUMHARA GHAR KA GHADI HAI KYA – SIRIF LADIES KO HI GADI MEY CHADAYEGA AUR UTHARAYEGA”. This amounts to gross misconduct, indiscipline and insubordination on the part of Constable D.K. Yadav.

ARTICLE – III

Incorrigible habit of indulging in indisciplined activities in that No.892298411 Constable D.K. Yadav, CISF Unit VSSC Thumba during his service have been punished six times for various misconduct. Inspite of

various punishments he has not improved. This amounts to gross misconduct and indiscipline on the part of Constable D.K. Yadav."

10. For appreciating the contentions properly, it is necessary to reproduce here the statement of imputations in respect of charge No.3 which is also detailed in Ext.P1, which reads thus.

"1. Awarded the punishment of withholding of one increment for a period of one year without cumulative effect for over saying from leave w.e.f. 30.06.92 to 14.07.92 for 15 days by Dy. Comdt. FCI Ramagundam vide order No.V-15014/Min-20/CISF/FCI(a)/92/2352 dated 22/23.10.92.

2. Awarded the punishment of two days pay fine for coming to the "B" shift duty under influence of liquor on 27.04.93 and when he was refused to take on duty, he managed to obtain sick rest for two days, by Dy. Comdt. FCI Ramagundam vide order No.V-15014/Min-14/CISF/FCI(R)/Admn.II/93/1835 dated 06.08.93.

3. Awarded the punishment of pay fine equal to seven days pay for absenting from unit lines from 2100 hrs to 2200 hrs on 30.09.93 while under suspension by Dy.Comdt. FCI Ramagundam vide order No.V-15014/PR/Min-27/93/268 dated 22.01.94.

4. Awarded the punishment of pay fine equal to seven days pay for absenting from unit lines from 0930 hrs to 1200 hrs on 30.10.93 while under suspension by Dy. Comdt.FCI Ramagundam vide order No.V-15014/PR/Min-29/93/267 dated 22.01.94.

5. Awarded the punishment of dismissal from service by GP. Comdt. GP Hqrs Hyderabad on 14.3.94 for misbehaving with SI/Steno V.A. Rajan and manhandling SI/Min A.R. Rout under the influence of liquor on 03.09.93. Later on, the appellate authority re-instated the appellant and modified the said punishment to that of Reduction of pay to the minimum for a period of three years with cumulative effect vide DIG (SZ) order No.V-11014/33/94/L&R(SZ)/7672 dated 18.11.98.

6. Awarded the punishment of Censure for misbehaving with Inspt/Exe.N.G. Gopi under the influence of liquor on 24.06.2000 by AC RPP/RFF Sector VSSC Thumba vide order No.V-15010/20/CISF/RPP-RFF/2000/880/dated 12.07.2000."

11. On these charges, an enquiry was conducted, in which the petitioner was found guilty of the misconducts and the punishment of dismissal from service was imposed on the petitioner. His appeal and revision having become unsuccessful, the petitioner has approached this Court with this writ petition. In this writ petition, the petitioner does challenge the disciplinary proceedings on the ground of violation of principles of natural justice. He raises several contentions. First is that he was not given the assistance of a member of the Forces as requested by him which is provided for in Rule 34(5) of the Central Industrial Security Forces Rules 1969. The second is that the petitioner was not well versed in English and since the enquiry proceedings were conducted in English and he was not provided with a translator, such proceedings are violative of the principles of natural justice. Thirdly, the petitioner contends that he was not given sufficient opportunity to defend himself by examining defence witnesses.

12. I shall deal with these contentions in seriatim. It would be advantageous is to extract here Rule 34 of Central Industrial Security Forces Rules 1969, based on which the petitioner has raised his first contention. Rule 34 relates to procedure for

imposing major penalties. Sub Rule 5 thereof reads thus:

“The member of the Force so charged may be permitted by the Inquiring Authority referred to above to present his case with the assistance of any other member of the Force approved by it.”

13. On the strength of the decision in O.P. No.72/2001 confirmed by a division Bench of this Court in appeal, the learned counsel for the petitioner would contend that the word 'may' therein should be read as 'shall' and therefore he had a right to present his case with the assistance of any other member of the Forces approved by the disciplinary authority. The petitioner submits that he had proposed names of two persons as defence assistant one of whom did not give his consent but the second man did. That man belonged to a unit near Vishakhapatnam. Although initially the disciplinary authority approved the same later he refused to release that person for this purpose on the ground of exigencies of service because of shortage of man power in the unit of the said proposed defence assistant. The petitioner's contention is that he could not find any other member of the Force willing to assist him in the enquiry. Therefore relying on the judgment in O.P.No.72/01, stating that the facts therein were almost identical to those in this case he submits that there was violation of principles of natural justice in so far as he was denied a defence assistant and therefore the ratio of that decision would squarely apply to the present case. In this connection it must be noted that the petitioner was stationed

at Thiruvananthapuram where the enquiry was conducted there and the defence assistant was at a unit near Visakhapattanam, which is far away from Thiruvananthapuram. The petitioner categorically asserts that the disciplinary authority had a malafide intention in refusing the petitioner the help of a defence assistant. In the absence of any contentions of malafides in the writ petition, I do not think that I can countenance his contention in that regard. The learned counsel for the petitioner points out that with effect from 2001, Sub Rule 5 was amended to the effect that the defence assistant of the delinquent's choice should be from the place of enquiry which would show that when the enquiry against the petitioner was conducted the rules permitted deploying defence assistant from other units afar also. Such a proposition cannot be disputed in view of Sub Rule 5 as it stood then. But the question here is as to whether the Armed Forces should spare a defence assistant whose services cannot be spared from his unit for want of sufficient man power in his unit. In this connection the long distance between Thiruvananthapuram and Vishakhapatnam gains much importance. If sparing of that officer from Vishakhapatnam would affect the working of his unit, I do not think that there is anything wrong in the disciplinary authority refusing promotion to the petitioner to avail of assistance of that particular person especially in the absence of any allegation of malafides against the

disciplinary authority. The petitioner has no case that he was not permitted to avail of the assistance of any other person. But his contention is that he could not find any. That cannot be a ground for holding that the disciplinary proceedings are vitiated for want of compliance with the principles of natural justice.

14. The second contention of the petitioner is that since he was not well versed in English or Malayalam, the disciplinary proceedings were vitiated for violation of principles of natural justice in so far as he has not been given the assistance of a translator especially since the material witness was in fact given the assistance of a translator at her request. But admittedly the depositions were in fact translated to the petitioner. In this connection it would be advantageous to extract ground E of the petitioner's revision petition, namely Ext.P5.

"E. The revision petitioner did not know English. But the enquiry was in English. Initially the revision petitioner thought that the Enquiry officer was truthfully and faithfully translating Hindi and Malayalam depositions into English. Crucial witnesses deposed in Malayalam. The revision petitioner believed the Enquiry Officer and his translation. But in the course of the enquiry it came to his notice that the Enquiry Officer was not translating the depositions correctly. It was impossible for him to proceed with enquiry in the absence of a translator or assisting member of the Force. His petitions addressed to the higher authorities were not at all forwarded. But instead he was given a firm 'no' to his insistence for a translator/assisting member of the Force."

15. The same would show that the depositions were actually translated to the petitioner. He has no contention that the enquiry Officer was in any way inimical to the petitioner except in the revision petition. He came with a contention that at first he believed the Enquiry Officer and his translation but later on noticed that the enquiry officer was not translating the depositions correctly. I am not inclined to take into consideration that such a contention on face value which was taken only in the revision petition. If the petitioner had such a contention genuinely he should have then and there made it before the Enquiry Officer which the petitioner had not done. In the absence of any such specific objections raised by the petitioner before the Enquiry Officer, I must assume that the petitioner had no objection whatsoever regarding the proceedings while the witnesses were examined. In such circumstances, I am unable to accept the contentions of the petitioner in this regard also.

16. The last contention of the petitioner is that he was not given sufficient opportunity to adduce defence evidence in this regard. He specifically relies on Ext.P9 communication given to him in answer to his Ext.P8 complaint regarding the failure to make available the services of the defence assistant from the unit near Vishakhapatnam. He would point out that Ext.P9 was issued on

17.5.01 in which there was a direction to complete the enquiry proceedings by 25.5.01. He would contend that on 22.5.01, the enquiry was closed without any posting for production of defence evidence. I do not find any merit in this contention also. On 22.5.01, admittedly the petitioner did not take part in the enquiry in spite of receipt of notice. He also did not make any application for adjourning the proceedings. Therefore the enquiry officer had no option but to proceed further exparte. It was under the said circumstances that the Enquiry officer closed the evidence on that date. The petitioner has also no case that at any point of time he had informed the Enquiry Officer that he had any defence witnesses to be examined and he should be given an opportunity to examine those defence witnesses . In such circumstances, there is no merit in that contention also.

The result of the above discussion is that the writ petition No.15817/03 is also devoid of any merits. Accordingly, the same is also dismissed. However I do not make any order as to costs.

S. SIRI JAGAN, JUDGE

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